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DEC 12 2003

FAX MESSAGE

FAX #1

Send To:

Name: Examiner Michele Flood

FAX Number: 703-746-5245

Firm: US Patent Office

Telephone Number: 703-308-9432

FAX #2

Send To:

Name:

FAX Number: 703-872-9306

Firm: US Patent Office

Telephone Number:

Name: Gregory T. Lowen, Ph.D.

Floor: 3

Operator Sending:

Telephone Number: 202-739-5915

Time Sent:

Date Sent: December 12, 2003

Number of Pages (including cover page): 6

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Re: U.S. Patent Application No.: 09/891,615

Title: EXTRACTS, COMPOUNDS AND PHARMACEUTICAL COMPOSITIONS HAVING DIABETIC ACTIVITY

Inventor: Ian Duncan RUBIN et al.

Our Reference: 060616-5003 US (formerly 013306-08-5003 US)

Dear Examiner Flood:

Per our telephone conversation today, I am faxing you a courtesy copy of a response that we filed on May 29, 2003. I am also faxing a copy of the stamped verification that the response was received by the Patent Office on that date. Please don't hesitate to call me with any questions.

Regards,



Gregory T. Lowen (Reg. No. 46,882)

(FRI) 12/12/03 15:10/ST. 15:10/NO. 3560278998 P 1

FROM

PLEASE STAMP AND RETURN TO SHOW RECEIPT OF:

U.S. Patent Application of: Ian Duncan RUBIN *et al.*
Application No.: 09/891,615 Group Art Unit: 1654
Filed: June 27, 2001 Examiner: Michele C. Flood
For: *Extracts, Compounds And Pharmaceutical*
Compositions Having Anti-Diabetic Activity
And Their Use

1. Transmittal Form
2. Response to Notice of Non-Responsiveness to Restriction/Election Requirement

Dated: May 29, 2003
Attorney Docket No.: 013306-08-5003 US
GTL/dmb



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PATENT

ATTORNEY DOCKET NO. 013306-08-5003 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 12 2003

In re Application of:

Ian Duncan RUBIN *et al.*

Application No.: 09/891,615

Group Art Unit: 1654

Filed: June 27, 2001

Examiner: Michele C. Flood

For: *Extracts, Compounds And
Pharmaceutical Compositions Having
Anti-Diabetic Activity And Their Use*

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO NOTICE OF NON-RESPONSIVENESS TO RESTRICTION/ELECTION
REQUIREMENT TRANSMITTAL FORM

1. Transmitted herewith is a response to the Restriction Requirement dated May 5, 2003.
2. Additional papers enclosed:

- ☐ Information Disclosure Statement
- ☐ Form PTO-1449
- ☐ Citations

3. Extension of Time

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136(a) apply.

☒ Applicant believes that no extension of time is required.

☐ Applicant petitions for an extension of time, the fees for which are set out in 37 CFR § 1.17(a), for the total number of months checked below:

<u>Total Months Requested</u>	<u>Fee for Extension</u>	<u>[Fee for Small Entity]</u>
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 390.00	\$195.00
<input type="checkbox"/> three months	\$ 890.00	\$445.00

Attorney Docket No. 013306-08-5003-US

Application No. 09/891,615

Page 2 of 3

☐ four months \$1,390.00 \$695.00

If an additional extension of time is required, please consider this a Petition therefor.

☐ An extension for ___ months has already been secured and the fee paid therefor of \$_____ is deducted from the total fee due for the total months of extension now requested.

4. Constructive Petition

☒ **EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

5. Fee Payment

- ☐ The Commissioner is hereby authorized to charge any additional extension of time or additional claim fees due to Deposit Account No. 50-0310.
- ☐ The Commissioner is hereby authorized to charge for any additional fees which may be required, including fees due under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account 50-0310.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: May 29, 2003

By:

Gregory T. Lowen
Gregory T. Lowen, Ph.D.
Reg. No. 46,882

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PATENT

ATTORNEY DOCKET NO.: 013306-08-5003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of:

Ian Duncan RUBIN *et al.*

Application No.: 09/891,615

Filed: June 27, 2001

For: EXTRACTS, COMPOUNDS AND
PHARMACEUTICAL COMPOSITIONS
HAVING ANTI-DIABETIC ACTIVITY
AND THEIR USE

Group Art Unit: 1654

Examiner: Michele C. Flood

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO NOTICE OF NON-RESPONSIVENESS TO
RESTRICTION/ELECTION REQUIREMENT**

Applicants received a notice mailed May 5, 2003 indicating that Applicants' filed response of March 28, 2003 with regard to an election/restriction requirement was deemed non-responsive because no species election had been made between the plant genus *Trichocaulon* and the plant genus *Hoodia*. Applicants elect, without traverse, the species of the plant genus *Hoodia* and identify claims 1-12, 25, 29-30, 32 and 34 as encompassing the elected species *Hoodia*. Because this response is being filed within the statutorily designated period of one month, Applicants believe that no extension of time fee is required.

REMARKS

On March 28, 2003, Applicants responded to a Restriction Requirement mailed on November 29, 2002 which stated that the application contained claims directed to "the following patentably distinct species of the claimed invention: the distinct ingredients of claim 1, namely an extract of the genus *Trichocaulon* or the genus *Hoodia*." Applicants were required to elect a